



## UNITED STATES DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0124; Notice 4]

#### General Motors LLC, Receipt of Fourth Petition for Inconsequentiality and Notice of Consolidation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of receipt of petition.

**SUMMARY:** On January 2, 2019, TK Holdings Inc. (Takata) filed a defect information report (DIR), in which it determined that a defect existed in certain passenger-side air bag inflators that it manufactured, including passenger inflators that it supplied to General Motors, LLC (GM) for use in certain GMT900 vehicles. GM has petitioned the Agency for a decision that, because of differences in inflator design and vehicle integration, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles, and that GM should therefore be relieved of its notification and remedy obligations. This notice serves to make the public aware of GM's pending request to the agency and the period for public comment. It does not address GM's substantive claims, nor legal arguments or interpretations asserted by GM.

**DATES:** The closing date for comments is [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments regarding this petition for inconsequentiality. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by one of the following methods:

- Internet: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- Facsimile: (202) 493-2251.

You may call the Docket at (202) 366-9324.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Thus, submitting such information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the “Privacy and Security Notice” link in the footer of <http://www.regulations.gov>. DOT’s complete Privacy Act Statement is available for review in the Federal Register published on April 11, 2000 (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. Comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

## **FOR FURTHER INFORMATION CONTACT:**

For legal issues: Stephen Hench, Office of the Chief Counsel, NCC-100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590 (telephone: (202) 366-5263).

For general information regarding NHTSA's investigation into Takata air bag inflator ruptures and the related recalls: <http://www.safercar.gov/rs/takata/index.html>.

## **SUPPLEMENTAL INFORMATION:**

### **I. Background**

On May 4, 2016, NHTSA issued, and Takata agreed to, an Amendment to the November 3, 2015 Consent Order (the "Amendment"), under which Takata is bound to declare a defect in all frontal driver and passenger air bag inflators that contain a phase-stabilized ammonium nitrate (PSAN)-based propellant and do not contain a moisture-absorbing desiccant. Such defect declarations are being made on a rolling basis, with the first declaration due May 16, 2016, the second declaration due December 31, 2016, the third declaration due December 31, 2017, and the fourth declaration due December 31, 2018. *See* Amendment at ¶ 14.

*GM's May 2016, January 2017, and January 2018 DIRs*

Takata timely submitted the first scheduled equipment DIRs on May 16, 2016. *See* Recall Nos. 16E-042, 16E-043, and 16E-044. Those DIRs included non-desiccated passenger inflators, designated as types SPI YP and PSPI-L YD, that were installed as original equipment on certain motor vehicles manufactured by GM (the "covered passenger inflators"), as well as other non-desiccated passenger inflators installed as original equipment on motor vehicles manufactured by a number of other automakers, which are not at issue here.

The Takata filing triggered GM's obligation to file a DIR for the affected GM vehicles. *See* 49 CFR Part 573; Amendment at ¶ 16; November 3, 2015 Coordinated Remedy Order at ¶ 46. GM ultimately submitted two DIRs on May 27, 2016. *See* Recall Nos. 16V-381 (for vehicles in Zone A) and 16V-383 (for vehicles in Zone B). On November 15, 2016, GM petitioned the Agency, under 49 U.S.C. 30118(d), 30120(h) and 49 CFR Part 556, for a decision that the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles. *See* GM's Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata "SPI YP" and "PSPI-L YD" Passenger Inflators (the "First Petition for Inconsequentiality" or "First Petition"). In a Notice published in the Federal Register on November 28, 2016, the Agency published notice of the First Petition and granted two administrative requests, accepting the petition out of time and granting GM additional time to provide data in support of the petition. *See* 81 FR 85681.

On January 3, 2017, Takata timely submitted the second scheduled equipment DIRs for additional covered passenger inflators. *See* Recall Nos. 17E-001, 17E-002, and 17E-003. Again, the Takata filing triggered GM's obligation to file a DIR for the affected GM vehicles. *See* 49 CFR Part 573; Amendment at ¶ 16; Third Amendment to Coordinated Remedy Order at ¶ 32. GM ultimately submitted its DIRs on January 10, 2017, and notified NHTSA of its intention to file an inconsequentiality petition.<sup>1</sup> Contemporaneous with its DIRs, GM submitted to the Agency a Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata "SPI YP" and "PSPI-L YD" Passenger

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<sup>1</sup> When a manufacturer files a petition for inconsequentiality, the affected DIR will not be made public unless and until the Agency denies the petition.

Inflators Subject to January 2017 Takata Equipment DIR Filings (the “Second Petition for Inconsequentiality” or “Second Petition”).

On September 11, 2017, the Agency published a notice of receipt of the Second Petition and, as GM’s Second Petition was virtually identical to its First Petition (both involved the same covered passenger inflators and same vehicle platform, relied upon the same purported evidence, and would rely upon the same forthcoming report), consolidated the Second Petition with the First Petition under Docket No. NHTSA-2016-0124. *See* 82 FR 42718.

On January 2, 2018, Takata timely<sup>2</sup> submitted the third scheduled equipment DIRs for additional covered passenger inflators. *See* Recall Nos. 18E-001, 18E-002, and 18E-003. Again, the Takata filing triggered GM’s obligation to file a DIR for the affected GM vehicles. *See* 49 CFR Part 573; Amendment at ¶ 16; Third Amendment to Coordinated Remedy Order at ¶ 32. GM ultimately submitted its DIRs on January 9, 2018, and notified NHTSA of its intention to file an inconsequentiality petition.<sup>3</sup> Contemporaneous with its DIRs, GM submitted to the Agency a Petition for Inconsequentiality Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators Subject to January 2018 Takata Equipment DIR Filings (the “Third Petition for Inconsequentiality” or “Third Petition”). GM’s Third Petition requested that NHTSA grant GM’s First, Second and Third Petitions or, in the alternative, that NHTSA defer its decision on the First, Second, and Third Petitions until March 31, 2018, which would allow GM time to complete further study and analysis.

On April 9, 2018, the Agency published a notice of receipt of the Third Petition, consolidated the Third Petition with the First and Second Petitions under Docket No. NHTSA-2016-0124, and—emphasizing that NHTSA’s previous grant of additional time for GM to

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<sup>2</sup> December 31, 2017 was a Sunday, and Monday, January 1, 2018 was a federal holiday.

<sup>3</sup> When a manufacturer files a petition for inconsequentiality, the affected DIR will not be made public unless and until the Agency denies the petition.

present information was extraordinary—denied GM’s request that NHTSA defer decision on the Third Petition until March 31, 2018. *See* 83 FR 15233.

#### *GM’s January 11, 2019 DIRs*

Takata submitted the fourth scheduled equipment DIRs on January 2, 2019. Once more, the Takata filing triggered GM’s obligation to file a DIR for the affected GM vehicles. *See* 49 CFR Part 573; Amendment at ¶ 16; Third Amendment to Coordinated Remedy Order at ¶ 32. GM submitted its DIRs on January 11, 2019. Therein, in accordance with 49 CFR 573.6(c)(8)(iii), GM notified NHTSA of its intention to file a petition for inconsequentiality and contemporaneously submitted to the Agency a Petition for Inconsequentiality Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators Subject to January 2019 Takata Equipment DIR Filings (the “Fourth Petition for Inconsequentiality” or “Fourth Petition”).<sup>4</sup>

## **II. Class of Motor Vehicles Involved**

GM’s Fourth Petition involves certain “GMT900” vehicles that contain the covered passenger inflators (designated as inflator types “SPI YP” and “PSPI-L YD”). GMT900 is a GM-specific vehicle platform that forms the structural foundation for a variety of GM trucks and sport utility vehicles, including: Chevrolet Silverado 1500, GMC Sierra 1500, Chevrolet Silverado 2500/3500, GMC Sierra 2500/3500, Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, GMC Yukon, GMC Yukon XL, Cadillac Escalade, Cadillac Escalade ESV, and Cadillac Escalade EXT. The Fourth Petition involves the following GMT900 vehicles:

- In Zone A, affected model year 2014 GMT900 vehicles. Zone A comprises the following states and U.S. territories: Alabama, California, Florida, Georgia,

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<sup>4</sup> When a manufacturer files a petition for inconsequentiality, the affected DIR will not be made public unless and until the Agency denies the petition.

Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. *See* Amendment at ¶ 7.a.

- In Zone B, affected model year 2011–2014 GMT900 vehicles. Zone B comprises the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. *See* Amendment at ¶ 7.b.
- In Zone C, affected model year 2010–2014 GMT900 vehicles. Zone C comprises the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

### **III. Summary of GM’s Fourth Petition for Inconsequentiality**

GM’s Fourth Petition relies on arguments, data, and analysis in its First and Second Petitions (and supplemental brief thereto) and Third Petition, information submitted to the Agency during briefings with NHTSA, additional arguments and engineering analysis as presented in the Fourth Petition, and the full administrative record. *See* Fourth Petition at 1.

According to the Fourth Petition, “[a]fter the filing of the Third Petition, GM and Northrop Grumman continued to investigate and analyze the longer-term performance of the GMT900 Inflators.”<sup>5</sup> *Id.* at 3. Specifically, GM states that Northrop Grumman: aged leftover GMT900 inflators from the original aging study to “extreme field exposure” of an estimated

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<sup>5</sup> To supplement its internal analysis, GM retained a third-party expert, Orbital ATK (“OATK”), to conduct a long-term aging study to estimate the service life expectancy of the covered passenger inflators in the GMT900 vehicles. *See* First Petition at 12. Northrop Grumman has since acquired OATK.

thirty-five years—“produc[ing] more ruptures in the comparison group non-GMT900 Takata inflators but no ruptures in the GMT900 Inflators”—and applied a predictive-rupture model to GMT900 Inflators yielding results consistent with those from the long-term aging study. *Id.* at 3–4. GM contends it thereby “has established that worse-than-worst case humidity exposure and temperature cycling will not cause inflator ruptures in the GMT900 Vehicles at any point within even unrealistically conservative vehicle-service life estimates”—*i.e.*, that the covered passenger inflators, as integrated into the GMT900 vehicles, do not present an unreasonable risk to safety. *See id.* at 4.

According to the Fourth Petition, GM’s position is based upon the following: field data, including GM’s estimated 66,894 Takata passenger air bag inflator deployments in GMT900 vehicles without a reported rupture and ballistic tests of 4,270 covered passenger inflators without a rupture, the “final” results of Northrop Grumman’s study of inflators artificially exposed to additional humidity and temperature cycling without a rupture or abnormal deployment and accompanying statistical interpretation of those results,<sup>6</sup> and a predictive-aging model developed by Northrop Grumman. *Id.* at 12–16. GM also states that it “does not believe” that objections in several public comments regarding the design of the aging study “merit a comprehensive response,” although GM does “emphasize[.]” “a few points regarding the study’s design” to contend that its analysis is supported. *See id.* at 15–16.

In addition, GM states that the covered passenger inflators are not used by any other original equipment manufacturer and, further, that the covered inflators have a number of unique design features that influence burn rates and internal ballistic dynamics, including greater vent-

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<sup>6</sup> After filing its Third Petition, Northrop Grumman continued the long-term aging study by aging remaining GMT900 covered passenger inflators to thirty-five years—five years beyond the study’s original thirty years. Fourth Petition at 13. GM states that it observed no ruptures in the remaining forty-five inflators after this additional aging, and that this “is consistent with field data and ballistic testing data from GMT900 Inflators recovered from the field.” *Id.* at 13–14.



area-to-propellant-mass ratios, steel end caps, and thinner propellant wafers. *See id.* at 6. GM also states that the physical environment of the GMT900 vehicles better protects the covered passenger inflators from temperature cycling that can lead to propellant degradation and, ultimately, inflator rupture. *See id.* at 7.

This notice serves to make the public aware of GM's pending request to the agency and the period for public comment. Accordingly, it does not address the substantive claims, or legal arguments or interpretations, asserted by GM.

#### **IV. Consolidation**

GM's Fourth Petition for Inconsequentiality involves newer model years of the same covered passenger inflators (*i.e.*, frontal passenger inflator types "SPI YP" and "PSPI-L YD"), the same vehicle platform (*i.e.*, the GMT900), and similar purported evidence to support the safety of the inflators (*e.g.*, estimated field deployments, ballistic testing), and relies upon results derived from the same long-term aging study as GM's First, Second, and Third Petitions. Accordingly, it is appropriate to evaluate the First, Second, Third, and Fourth Petitions together. In the interest of clarity, consistency, and efficiency, the Agency is consolidating the Fourth Petition with the First, Second, and Third Petitions (the "Consolidated Petitions") under Docket No. NHTSA-2016-0124.

**Authority:** 49 U.S.C. 30101, *et seq.*, 30118, 30120(h), 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 CFR 1.95(a); 49 CFR Parts 556, 573, 577.

Issued:

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Jonathan Morrison  
Chief Counsel

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